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David Kirchhoff

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EXAMINER

RIVIERE, HEIDI M

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/797,284	<b>Applicant(s)</b> KIRCHHOFF ET AL.	
	<b>Examiner</b> HEIDI RIVIERE	<b>Art Unit</b> 3689	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-59 and 69-80 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-59 and 69-80 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/10/2010</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Reopening Prosecution***

1. In view of the Board of Patent Appeals and Interferences 29 September 2010 remand of the application in view of the Request to Reopen Prosecution filed on 23 August 2010, PROSECUTION IS HEREBY REOPENED. To avoid abandonment of the application, appellant must exercise one of the following two options:(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37CFR 1.113 (if this Office action is final); or (2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid. A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

2. /Janice A. Mooneyham/
3. Supervisory Patent Examiner, Art Unit 3689

## **RESPONSE TO ARGUMENTS**

4. Applicant's arguments filed **23 August 2010** have been fully considered. The rejections have been readjusted and the Mault 069 reference is now the primary reference used. This reference more thoroughly addresses the claimed limitations and

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Applicant's arguments. Applicant argues that the Mault 164 reference does not account for updated weight of individual as well as automatically adjusting a target caloric intake for the user based on updated weight data. However, the Mault 069 reference in Figure 6 notes that current balances of weight and daily caloric data can be revised as target weight and diet planning information changes. Mault 069 also teaches in figures 8a, 8b, 8c, 8d, 8e, and 8f and paragraph 57, that entered target weight information affects nutrient targets which include calories. Paragraph 51 notes that the health management software provides for the "Entry of food consumption through a food log with a search capability; entry of activity information combined with a search tool (alternatively using data from an activity sensor); feedback to the user regarding the caloric balance and time dependent logging of body measurements such as resting metabolism, body weight, and body fat percentage; reporting on body measurement trends using graphical display capabilities of the computing device or other device such as an interactive television; and reporting on the nutritional balance of food intake." According to the website, [http://www.caloriesperhour.com/tutorial\\_BMR.php](http://www.caloriesperhour.com/tutorial_BMR.php) the equation to calculate RMR for women is  $(10 \times \text{weight}) + (6.25 \times \text{height}) - (5 \times \text{age}) - 161$ . When daily weight entry changes so is the value of caloric balance. The Mault 069 reference in paragraph 54 also teaches that the system provides future food alternatives to help with diet planning. Paragraph 99 notes that the user can use the meal log to plan their daily meals. Therefore, rejection has not been withdrawn.

5. The claims rejected under 35 USC 101 have been amended and therefore the rejections are withdrawn. However, please note the new 35 USC 101 rejections for claims 49-59.

6. In regards to the 35 USC 112 paragraph 2 rejection, Applicant argues that paragraph 117 of the Pre-grant Published version of the current application teaches that the "the meal planner 306 automatically alters the dietary recommendations of the weight control program 115 (FIG. 1) based on the updated weight 322 in accordance with the general rules of the weight control program 115." Although paragraph 117 actually teaches the meal planner 306 alters the dietary recommendations and because the dietary recommendations are altered the recommended quantity and type of food is altered, the link is enough to consider the process automatic and therefore the rejection of this limitation is withdrawn.

However, there is no noted means for "determining a target food consumption plan". Applicant argues that paragraph 133 which defines a "target food consumption plan" as "a predetermined amount of food" teaches a structure for creating the plan. Paragraph 133 does not provide structure and therefore this rejection is not withdrawn.

### ***Claim Rejections - 35 USC § 101***

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 49-59 are rejected under 35 U.S.C. 101. Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to an examiner is

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that a § 101 process must (1) be tied to a particular machine or apparatus or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

To qualify as a § 101 statutory process, the claim should recite the particular machine or apparatus to which it is tied, for example by identifying the machine or apparatus that accomplishes the method steps, or positively reciting the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

There are two corollaries to the machine-or-transformation test. First, a mere field-of-use limitation is generally insufficient to render an otherwise ineligible method claim patent-eligible. This means the machine or transformation must impose meaningful limits on the method claim's scope to pass the test. Second, insignificant extra-solution activity will not transform an unpatentable principle into a patentable process. This means reciting a specific machine or a particular transformation of a specific article in an insignificant step, such as data gathering or outputting, is not sufficient to pass the test.

Here, applicant's method steps fail the first prong of the new test because the claims noted above recited an electronic method of controlling body weight, but are not limited to any machine or apparatus. Claim 49 teaches managing data that is utilized by an online weight control program. However, the receiving of the data and the creation

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of a dataset are not linked to a machine or apparatus. The steps of receiving and updating the data can be done manually as well as storing which can be performed manually as well using a file. Furthermore, the weight control program linked to the step of storing is not a computer program but rather the weight control plan which can also be followed without a machine or apparatus.

Further, applicant's method steps fail the second prong of the test because the claimed steps do not result in an article being transformed from one state to another. There is no transformation occurring in the claims for a physical object or substance or data that represents physical objects or substances.

### ***Claim Rejections - 35 USC § 112***

8. Claims 36-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. According to MPEP Section 2181, "The disclosure of the structure (or material or acts) may be implicit or inherent in the specification if it would have been clear to those skilled in the art what structure (or material or acts) corresponds to the means (or step)-plus-function claim limitation. See *Id.* at 1380, 53 USPQ2d at 1229; *In re Dossel*, 115 F.3d 942, 946-47, 42 USPQ2d 1881, 1885 (Fed. Cir. 1997). If there is no disclosure of structure, material or acts for performing the recited function, the claim fails to satisfy the requirements of 35 U.S.C. 112, second paragraph."

Applicant claims "means for determining a target food consumption plan" – however the specification is silent as to what the corresponding structure, material or acts of this means are. The specification merely notes in paragraph 38 which also references Figure 1, for example that the system includes "general rules" however there is not mention of what these rules could be and no disclosure as to the details of the program 115 noted or any specific algorithm or software as to how to determine a plan based on weight. Paragraph 133 in the pre-grant published application teaches what a food consumption plan is but does not mention what structure is used to create the food consumption plan.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. **Claims 1-10, 12-16, 18-50, 52-59, and 69-80** are rejected under 35 U.S.C. 102(e) as being anticipated by **Mault (2002/0062069 A1)** (hereinafter "**Mault-069**").

11. **With respect to Claim 1: (Original)** Mault-069 teaches:



- *A processor operable to execute software that maintains a meal plan for the person; A memory unit operable to store data associated with the meal plan;* (Mault-069 – paragraphs 57, 99 – "user 102 can use the meal log to plan their daily meals to ensure that the meals the consume correspond with their weight management goals"; Fig. 6 – diet planning; paragraph 71 – health and weight status information are transmitted via communications network and stored in memory of remote computer; paragraph 86 - processor or microprocessor used); and
- *An input/output device operable to provide an interface for the person to operate the software and receive an updated body weight from the person; A display operable to present the meal plan to the person, the meal plan being automatically altered by the processor based on the updated body weight.* (Mault 069 – figure 6 – target weight linked to diet planning in goal modules, goals can be revised; figures 8a, 8b, 8c, 8d, 8e, and 8f and paragraph 57, that entered target weight information affects nutrient targets which include calories. Paragraph 51 notes that the health management software provides for the "Entry of food consumption through a food log with a search capability; entry of activity information combined with a search tool (alternatively using data from an activity sensor); feedback to the user regarding the caloric balance and time dependent logging of body measurements such as resting metabolism, body weight, and body fat percentage; reporting on body measurement trends using graphical display capabilities of the computing

device or other device such as an interactive television; and reporting on the nutritional balance of food intake.”; paragraph 54 also teaches that the system provides future food alternatives to help with diet planning. Paragraph 99 notes that the user can use the meal log to plan their daily meals.).

12. **With respect to Claim 2: (Original)** Mault-069 teaches:

- *A network coupled to the system; Wherein the input/output unit is operable to communicate the data associated with the meal plan across the network.*

(Mault 069 - Paragraph 70 – communications network is Internet; paragraph 71 – health and weight status information are transmitted via communications network and stored in memory of remote computer; paragraph 86 - processor or microprocessor used) and

13. **With respect to Claims 3 and 77: (Original)** Mault-069 teaches *the network is the Internet.* (Mault-069: Paragraph 70 – communications network is Internet).

14. **With respect to Claim 4: (Original)** Mault-069 teaches *the software being executed, by the processor is further operable to generate the meal plan based on characteristics associated with the person.* (Mault-069 – paragraphs 57, 99 – “user 102 can use the meal log to plan their daily meals to ensure that the meals the consume correspond with their weight management goals”; Fig. 6 – diet planning; figure 6 – target weight linked to diet planning in goal modules).

15. **With respect to Claims 5 and 80: (Original)** Mault-069 teaches *the characteristics include demographics.* (Mault-069: figure 6 – target weight linked to diet planning in goal modules).

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16. **With respect to Claims 6, 35, 47 and 75: (Original; claim 35 is currently amended).** Mault-069 teaches *the display periodically or from time to time, on a computer presents to the person a reminder to enter the updated body weight.* (Mault-069: Paragraph 20 – to re-determine their RMR level a client would have to update their body weight information).

17. **With respect to Claim 7: (currently amended)** Mault-069 teaches:

- *Receiving, on a computer an initial body weight of the person;* (Mault 069 – fig. 6 – start weight entered into system).
- *Determining, on a computer a target food consumption plan for the person based at least in part on the initial body weight; Receiving, on a computer an updated weight of the person; Automatically altering, on a computer the target food consumption plan for the person based at least in part on the updated weight of the person.* (Mault 069 – figure 6 – target weight linked to diet planning in goal modules, goals can be revised; figures 8a, 8b, 8c, 8d, 8e, and 8f and paragraph 57, that entered target weight information affects nutrient targets which include calories. Paragraph 51 notes that the health management software provides for the “Entry of food consumption through a food log with a search capability; entry of activity information combined with a search tool (alternatively using data from an activity sensor); feedback to the user regarding the caloric balance and time dependent logging of body measurements such as resting metabolism, body weight, and body fat percentage; reporting on body measurement trends using graphical display

capabilities of the computing device or other device such as an interactive television; and reporting on the nutritional balance of food intake.”; paragraph 54 also teaches that the system provides future food alternatives to help with diet planning. Paragraph 99 notes that the user can use the meal log to plan their daily meals.)

18. **With respect to Claim 8: (Currently amended)** Mault-069 teaches:

- *Determining, on a computer a range of values based at least in part on the initial body weight of the person; and Selecting, on a computer food for the person to consume on a daily basis based on the range of values.* (Mault 069 – Figure 8F – healthy ranges given for weight; body fat and BMI; figure 6 – target weight linked to diet planning in goal modules, goals can be revised).

19. **With respect to Claim 9: (currently amended)** Mault-069 teaches *selecting, on a computer a meal plan from a predetermined set of foods.* (Mault-069: Fig. 9; paragraph 54 – list of alternative foods suggested; paragraph 99 – predetermined list of entrees).

20. **With respect to Claim 10: (Original)** Mault-069 teaches *the predetermined set of foods is composed of a pre-established set of foods and a user supplied set of foods.* (Mault-069: Fig. 9; paragraph 54 – list of alternative foods suggested; paragraph 99 – predetermined list of entrees).

21. **With respect to Claim 12: (Original)** Mault-069 teaches *the pre-established set of foods include branded foods.* (Mault-069: Fig. 9 – food listed with brand names;

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paragraph 54 – list of alternative foods suggested; paragraph 99 – predetermined list of entrees).

22. **With respect to Claim 13: (Original)** Mault-069 teaches *at least some of the predetermined set of foods are meals*. (Mault-069: Fig. 9; paragraph 54 – list of alternative foods suggested; paragraph 99 – predetermined list of entrees)

23. **With respect to Claim 14: (currently amended)** Mault-069 teaches *communicating, with a computer a message to the user based on the updated weight of the person*. (Mault-069: Paragraph 51 – system provides goals and feedback given to the user in relation to weight goals).

24. **With respect to Claim 15: (Original)** Mault-069 teaches *the message provides at least one of the following: congratulations, encouragement, suggestions, warnings, and feedback information*. (Mault-069: Paragraph 51 – system provides goals and feedback given to the user in relation to weight goals).

25. **With respect to Claim 16: (Currently Amended)** Mault-069 teaches:

- *Providing, on a computer a user selectable indicium operable to be utilized by the person in times of weight control difficulty; Receiving, on a computer a notification upon the user selectable indicium being selected by the person; Providing, on a computer the person at least one selectable element associated the underlying information*. (Mault-069: Paragraph 51 – system provides goals and feedback given to the user in relation to weight goals; user accesses via display)

26. **With respect to Claims 18 and 78: (Original)** Mault-069 teaches *at least one selectable element is a hyperlink*. (Mault-069: Paragraph 97 – hyperlinks used).
27. **With respect to Claim 19: (currently amended)** Mault-069 teaches *receiving, on a computer at least one of height and age of the person*. (Mault-069: Fig. 7A - age).
28. **With respect to Claims 20 and 40: (currently amended)** Mault-069 teaches *receiving, on a computer demographical information associated with the person*. (Mault-069: Fig. 7A - age)
29. **With respect to Claims 21 and 41: (currently amended)** Mault-069 teaches *altering, on a computer the target food consumption plan of the person based on the demographical information associated with the person*. (Mault-069: Fig. 7A - age).
30. **With respect to Claim 22: (Original)** Mault-069 teaches *the demographical information includes at least one of the following: gender, race, and ethnicity*. (Mault-069: Fig. 7A - gender).
31. **With respect to Claim 23: (Original)** Mault-069 teaches *determining of the target food consumption plan is further based at least in part on the demographical information associated with person*. (Mault 069 – figure 6 – target weight linked to diet planning in goal modules, goals can be revised).
32. **With respect to Claim 24: (Original)** Mault-069 teaches *determining of the target food consumption plan is based on decreasing weight of the person*. (Mault-069: Fig. 7A – can choose loose weight option).

33. **With respect to Claim 25: (Original)** Mault-069 teaches *determining of the target food consumption plan is based on maintaining weight of the person.* (Mault-069: Figs. 8A-8F – goals can be adjusted).

34. **With respect to Claim 26: (Original)** Mault-069 teaches *determining of the target food consumption plan is based on increasing weight of the person.* (Mault-069: Fig. 7A – can choose loose weight option; Figs. 7a, 8A-8F – preferred weight and goals can be adjusted).

35. **With respect to Claim 27: (Currently Amended)** Mault-069 teaches:

- *providing indicium, on a computer of selectable activities for the person to engage; receiving, on a computer a selection of at least one selectable activity from the user.* (Mault-069: Figs 20-25 – daily food consumption information entered, activities noted, foods list presented, target caloric goal noted; Paragraph 49 – PDA used).

36. **With respect to Claims 28 and 44: (currently amended)** Mault-069 teaches *utilizing the selection to alter, on a computer the amount of consumable food to satisfy the target consumption plan.* (Mault-069: Figs. 8A-8F – goals can be adjusted; figure 6 – target weight linked to diet planning in goal modules, goals can be revised; Paragraph 49 – PDA used)

37. **With respect to Claim 29: (currently amended)** Mault-069 teaches *altering, on a computer the target food consumption plan of the person based on the selection.* (Mault-069: Figs. 8A-8F – goals can be adjusted; figure 6 – target weight linked to diet planning in goal modules, goals can be revised; Paragraph 49 – PDA used).

38. **With respect to Claim 30: (Original)** Mault-069 teaches *automatically altering the target food consumption plan is performed by a computing device*. (Mault-069: Paragraph 49 – PDA used)

39. **With respect to Claim 31: (Original)** Mault-069 teaches *computing device is a hand-held computing device*. (Mault-069: Paragraph 49 – PDA used).

40. **With respect to Claim 32: (Original)** Mault-069 teaches *comprising communicating the altered food consumption plan across a network*. (Mault-069: Paragraph 70 – communications network is Internet).

41. **With respect to Claim 33: (currently amended)** Mault-069 teaches *comprising receiving, on a computer at least one other characteristic of the person*. (Mault-069: Paragraph 51 – system provides goals and feedback given to the user in relation to weight goals; user accesses via display; Fig. 7A – age).

42. **With respect to Claim 34: (Original)** Mault-069 teaches *determining of the target food consumption plan for the person is additionally based on the at least one other characteristic*. (Mault-069: Paragraph 51 – system provides goals and feedback given to the user in relation to weight goals; user accesses via display; Fig. 7A – age).

43. **With respect to Claim 36: (Original)** Mault-069 teaches:

- *Means for receiving an initial body weight of the person; Means for determining target food consumption plan for the person based at least in part on the initial body weight; Means for receiving an updated weight of the person; and Means for automatically altering the target food consumption plan for the person based at least in part on the updated weight of the person.*



(Mault-069: Paragraph 49 – PDA used; displays to enter information noted in figures 7A, 7B, 11A-11B, 12A-12C; figures 8a, 8b, 8c, 8d, 8e, and 8f and paragraph 57, that entered target weight information affects nutrient targets which include calories. Paragraph 51 notes that the health management software provides for the “Entry of food consumption through a food log with a search capability; entry of activity information combined with a search tool (alternatively using data from an activity sensor); feedback to the user regarding the caloric balance and time dependent logging of body measurements such as resting metabolism, body weight, and body fat percentage; reporting on body measurement trends using graphical display capabilities of the computing device or other device such as an interactive television; and reporting on the nutritional balance of food intake.”; paragraph 54 also teaches that the system provides future food alternatives to help with diet planning. Paragraph 99 notes that the user can use the meal log to plan their daily meals.)

2. **With respect to Claim 37: (Original).** Mault-069 teaches *means for selecting a meal plan from a predetermined set of foods*. (See at least Mault-069: Paragraph 99; figure 6 – target weight linked to diet planning in goal modules, goals can be revised).
44. **With respect to Claim 38: (Original)** Mault-069 teaches *means for communicating a message to the user based on the updated weight of the person*.

(Mault 069 – figure 6 – target weight linked to diet planning in goal modules, goals can be revised).

45. **With respect to Claim 39: (Original)** Mault-069 teaches:

- *Means for providing a user selectable indicia operable to be utilized by the person in times of weight control difficulty; Means for receiving a notification upon the user selectable indicia being selected by the person; and Means for providing the person at least one selectable element associated with underlying information, suggestions, and commentary.* (Mault-069: Paragraph 49 – PDA used; displays to enter information noted in figures 7A, 7B, 11A-11B, 12A-12C).

46. **With respect to Claim 42: (Original)** Mault-069 teaches *target food consumption plan is further based at least in part on the demographical information associated with person.* (Mault 069 – fig. 6 – start weight entered into system; target weight linked to diet planning in goal modules, goals can be revised).

47. **With respect to Claim 43: (Original)** Mault-069 teaches *means for receiving a selection of at least one selectable activity from the user. Means for providing indicia of selectable activities for the person to engage; Means for providing indicia of selectable activities for the person to engage;* (Mault-069: Paragraph 49 – PDA used; displays to enter information noted in figures 7A, 7B, 11A-11B, 12A-12C):

48. **With respect to Claim 45: (Original)** Mault-069 teaches *means for altering the target food consumption plan of the person based on the selection.* (Mault-069:

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Paragraph 49 – PDA used; displays to enter information noted in figures 7A, 7B, 11A-11B, 12A-12C):.

49. **With respect to Claim 46: (Original)** Mault-069 discloses *means for receiving at least one other characteristic of the person, said means for determining the target food consumption plan further basing the target food consumption plan on the at least one other characteristic.* (See at least Mault-069: Paragraphs 53 and 55 – personal details like age, size gender entered into the system; Paragraph 49 – PDA used; displays to enter information noted in figures 7A, 7B, 11A-11B, 12A-12C):).

50. **With respect to Claim 48: (Original)** Mault-069 teaches:

- *Receive an initial body weight of the person; Determine a target food consumption plan for the person based at least in part on the initial body weight; Receive an updated weight of the person; and Automatically alter the target food consumption plan for the person based at least in part on the updated weight of the person.* (Mault 069 – fig. 6 – start weight entered into system; target weight linked to diet planning in goal modules, goals can be revised; figures 8a, 8b, 8c, 8d, 8e, and 8f and paragraph 57, that entered target weight information affects nutrient targets which include calories. Paragraph 51 notes that the health management software provides for the “Entry of food consumption through a food log with a search capability; entry of activity information combined with a search tool (alternatively using data from an activity sensor); feedback to the user regarding the caloric balance and time dependent logging of body measurements such as resting

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metabolism, body weight, and body fat percentage; reporting on body measurement trends using graphical display capabilities of the computing device or other device such as an interactive television; and reporting on the nutritional balance of food intake.”; paragraph 54 also teaches that the system provides future food alternatives to help with diet planning. Paragraph 99 notes that the user can use the meal log to plan their daily meals.)

51. **With respect to Claim 49: (previously presented)** Mault-069 teaches:

- *Receiving identification of a user; Receiving an initial profile representative of characteristics of a user including a weight of the user; Forming a dataset based on the initial profile associated with the user; the dataset including a meal plan based in part on the weight of the user; Providing a plurality of interoperable selectable weight control elements for access by the user to personalize the dataset; Receiving data associated with the weight control elements; including an updated weight of the user; Updating the dataset in accordance with the received data such that the meal plan is altered based in part on the updated weight of the user; and Storing the updated dataset, the updated dataset being utilized by the user to follow a personalized weight control program.* (Mault 069 – fig. 6 – start weight entered into system; target weight linked to diet planning in goal modules, goals can be revised; figs. 7A-7B, 8A-8F - personal profile data includes name; paragraph 58 – diet log database)

52. **With respect to Claims 50: (Original)** Mault-069 teaches *the interoperable selectable weight control elements include at least one of food and exercise items.* (Mault 069 – figures 9 and 10 – food and activity items noted).

53. **With respect to Claim 52: (Original)** Mault-069 discloses *the dataset includes predetermined meals each having a total food value associated therewith.* (Mault-069: Paragraph 99 - “information such as nutritional value of the selected meal, [including] caloric, fat and vitamin analysis.”).

54. **With respect to Claim 53: (Original)** Mault-069 teaches *updating is performed automatically.* (Mault 069 – fig. 6 – start weight entered into system; target weight linked to diet planning in goal modules, goals can be revised).

55. **With respect to Claims 54: (Original)** Mault-069 teaches *the interoperable selectable weight control elements include a journal interface operable to provide a daily listing of foods for consumption in accordance with the personalized weight control program.* (Mault-069: Figs 20-24 – daily food consumption information entered, food list presented, target caloric goal noted).

56. **With respect to Claim 55: (Previously Amended)** Mault-069 however, discloses *the foods are alterable to establish a different daily listing of foods for consumption.* (Mault-069: Figs 20-24 – daily food consumption information entered, food list presented, target caloric goal noted)

57. **With respect to Claim 56: (Original)** Mault-069 discloses *crediting future daily listings based on a total food value of the daily listing being below a target value.* (Mault-

069: Figs 6, 20-24 – daily food consumption information entered, food list presented, target caloric goal noted)

**.With respect to Claim 57: (Original)** Mault-069 teaches *the target value is a maximum number of values as a function of food consumption and activities allotted by the weight control program.* (Mault-069: Figs 20-25 – daily food consumption information entered, activities noted, foods list presented, target caloric goal noted).

58. **With respect to Claim 58: (Original)** Mault-069 discloses *crediting is performed for a predetermined number of days.* (Mault-069: Figs. 6 and 11A-11B as well as supporting text; Paragraphs 54, 55, 60 and 62 – daily balance screen and weekly balance screen).

59. **With respect to Claim 59: (Original)** Mault-069 teaches *updating of the dataset is performed by a computing device in communication with a network.* (Mault-069: Paragraph 70 – communications network is Internet).

60. **With respect to Claim 69: (Original)** Mault-069 teaches:

- *A computing device operable to execute a software program having a plurality of software elements operable to facilitate control of body weight of the person, the software elements operable to facilitate control of body weight of the person utilizing at least two sources of input, A first input source being a planned set of food items to be consumed based on a current weight of the person and a second input source being an actual set of food items consumed by the person, The software elements further operable to receive updated weight of the person to alter the planned set of food items for future*

*food item consumption.* (Mault-069: Fig. 6 – goals can be revised; Figs 20-25 – daily food consumption information entered, activities noted, foods list presented, target caloric goal noted; paragraph 54 also teaches that the system provides future food alternatives to help with diet planning. Paragraph 99 notes that the user can use the meal log to plan their daily meals.)

61. **With respect to Claim 70: (Original)** Mault-069 teaches *the software elements are further operable to facilitate control of body weight of the person utilizing a third source of input being actual activities performed by the person.* (Mault-069: Figs 20-25 – daily food consumption information entered, activities noted, foods list presented, target caloric goal noted).

62. **With respect to Claim 71: (Original)** Mault-069 teaches *one software element is a journal operable to maintain information associated with the input sources.* (Mault-069: Figs 20-25 – daily food consumption information entered into balance log, activities noted, foods list presented, target caloric goal noted).

63. **With respect to Claim 72: (Original)** Mault-069 discloses *the software elements are operable to compute a food consumption value to be consumed based on food values associated with the actual food items consumed by the person.* (Mault-069: Figs. 9, 10, 11A 11B, 20-24 – actual food consumed noted; Paragraphs 53 and 55).

64. **With respect to Claim 73: (Previously Amended)** Mault-069 teaches:

- *A processor operable to execute software that maintains a meal plan for the person; A memory unit operable to store data associated with the meal plan;*

*An input/output device operable to provide an interface for the person to operate the software;* (Mault-069 – paragraphs 57, 99 – "user 102 can use the meal log to plan their daily meals to ensure that the meals the consume correspond with their weight management goals"; Fig. 6 – diet planning; paragraph 71 – health and weight status information are transmitted via communications network and stored in memory of remote computer; paragraph 86 - processor or microprocessor used)

- *A display operable to present the meal plan to the person, the meal plan being displayed in a multi-day format and including a user selectable indicium operable to be utilized by the person in order to display the meal plan for a particular one of the days displayed in the multi-day format.* (Mault-069: Figs. 11A, 11B and Fig. 20 – diet information can be displayed for the day or the week).

65. **With respect to Claim 74: (Original)** Mault-069 teaches *the input/output device is further operable to receive an updated body weight from the person, and wherein the meal plan is automatically altered by the processor based on the updated body weight.* (Mault-069 – paragraphs 57, 99 – "user 102 can use the meal log to plan their daily meals to ensure that the meals the consume correspond with their weight management goals"; Fig. 6 – diet planning, diet goals can be revised; paragraph 71 – health and weight status information are transmitted via communications network and stored in memory of remote computer; paragraph 86 - processor or microprocessor used).



66. **With respect to Claim 76: (Original)** Mault-069 teaches a *network coupled to the system, and wherein the input/output unit is operable to communicate the data associated with the meal plan across the network*. (Mault-069 – paragraphs 57, 99 – "user 102 can use the meal log to plan their daily meals to ensure that the meals the consume correspond with their weight management goals"; Fig. 6 – diet planning; paragraph 71 – health and weight status information are transmitted via communications network and stored in memory of remote computer; paragraph 86 - processor or microprocessor used).

67. **With respect to Claim 79: (Original)** Mault-069 teaches *the software being executed by the processor is further operable to generate the meal plan based on characteristics associated with the person*. (Mault-069 – paragraphs 57, 99 – "user 102 can use the meal log to plan their daily meals to ensure that the meals the consume correspond with their weight management goals"; Fig. 6 – diet planning; paragraph 71 – health and weight status information are transmitted via communications network and stored in memory of remote computer; paragraph 86 - processor or microprocessor used).

### ***Claim Rejections - 35 USC § 103***

68. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

69. **Claims 11** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Mault-069** in view of **Mault et al. (2002/0027164 A1)** (hereinafter "**Mault-164**").

70. **With respect to Claim 11: (Original)** Mault 069 teaches the limitations cited in the rejections above. Mault 069 teaches list of food but Mault 069 does not teach that this list includes food prepared by a restaurant. Mault-164 teaches *the pre-established set of foods include foods prepared by consumer restaurants*. (Mault-164: Paragraph 66- foods notes provides by vendors such as restaurants and online retailers for example).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Mault 069 and Mault 164 because there are various vendors for food and also users may not always eat at home. Mault 069 teaches a health and weight management system. Mault 164 teaches a portable computing apparatus for use in weight management program.

71. **Claim 17** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Mault-069** in view of **Jill Barker, "There's a gym on the Job: St. Mary's Hospital Offers Full-Service Facility for the Use of its Harried Staff"**, The Gazette, March 28, 2000 (hereinafter "**Barker**").

72. **With respect to Claim 17: (Currently Amended)** Mault-069 discloses the limitations as shown in the rejections above. Mault-069 does not teach *the user selectable indicium is a Panic button*. However, Barker discloses *the user selectable indicium is a Panic button*. (Barker: Page 1, full text, paragraph 4 – "for anyone who is

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injured or feels sick while exercising, a panic button is connected to the hospital's emergency room").

It would have been obvious to one of ordinary skill in the art at the time of the invention to have a panic button as part of a weight control device because of the motivation to help "anyone who is injured or feels sick while exercising." (Barker: Page 1, full text, paragraph 4). Mault 069 teaches a health and weight management system. Barker teaches a gym equipped with cardio vascular equipment.

73. **Claim 51** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Mault-164** in view of **Applicants Own Admission**.

74. **With respect to Claim 51:** Mault-069 discloses the limitations as shown in the rejections above. Mault-069 does not teach *forming of the dataset is a function of a predetermined set of rules operable to control weight*. Applicant's own admission discloses *forming of the dataset is a function of a predetermined set of rules operable to control weight*. (Background: Specification, Page 2, paragraph 5 – weight control program must adhere to rules).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have a predetermined set of rules to help control weight because of the motivation to "define the specific foods, times to eat and exercises to be performed." (Background: Page 2, paragraph 5).

### **CONCLUSION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Heidi Riviere whose telephone number is 571-270-1831. The examiner can normally be reached on Monday-Friday 9:00am-5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on 571-272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Heidi Riviere/  
Examiner, Art Unit 3689